

### **REMARKS**

The Official Action dated December 21, 2005 has been received and its contents carefully noted. By the above actions, claims 1-17 and 19-22 are pending in the application. In order to better define that which Applicants regard as the invention, claims 1, 17, and 19 have been amended and claims 21-22 have been added. In addition, claims 8-9 have been amended to correct informalities. No new matter has been added. Support for the Amendments is provided in the original claims, Figures 1-3 and related text of the specification.

In view of these actions and the following remarks, reconsideration of this application is now requested.

#### **Election/Restrictions**

The Examiner requires restriction to one of the following inventions under 35 U.S.C. § 121: I) claims 1-17 and 19-20, drawn to a massager unit, or II) claim 18 drawn to a method of providing massage therapy using a massager unit. Applicants affirm the provisional election, made by Applicants' representative on December 12, 2005, to prosecute the invention of group I, claims 1-17 and 19-20.

#### **Claim Objections**

The Examiner objects to claims 8-9 due to the following informalities: "the power supply means" lacks antecedent basis. Claims 8-9 have been amended to recite "the power supply" without the word "means." There is now antecedent basis in claim 7, on which claims 8-9 depend. Thus, withdrawal of this objection is in order and is respectfully requested.

#### **Rejections under 35 U.S.C. § 102**

Claims 1, 3, 7, 9-16 and 19 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,336,159 to Cheng. Applicants submit that the rejection has been rendered moot in view of the amendments made to independent claims 1 and 19. In particular, claims 1 and 19 now recite "a first massage head disposed at the first end of the handle, the first massage head having a first shape" and "a second massage head disposed at the second end of the handle, the second massage head having a second shape," "wherein the

first shape is different from the second shape.” FIG. 1 of the present application shows a first massage head 120 which is shaped differently than a second massage head 105. In addition, the present specification states that “[o]ne massage head of the massage unit may be wider than the other massage head.” (See present specification, p. 3, lines 7-8.) Contrary to claims 1 and 19, Cheng teaches that both massaging heads are the same, because each end of the massager employs the same receiving chamber 12 and the same massaging device 2. (See Cheng, col. 1, lines 46-49.) Indeed, FIGS. 1-3 in Cheng show two massaging heads with the same shape. Because Cheng fails to disclose, or suggest, two differently shaped massaging heads, as recited in independent claims 1 and 19, it fails to teach each and every element of the claims. Accordingly, withdrawal of the rejection is in order and is respectfully requested. In addition, Applicants respectfully submit that dependent claims 3, 7, and 9-16 are allowable since they depend on what is now believed to be allowable base claim 1.

Claims 1-6 and 19-20 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 5,611,771 to Taylor. Applicants submit that the rejection has also been rendered moot in view of the amendments made to independent claims 1 and 19. As described previously, independent claims 1 and 19 recite two massaging heads with different shapes. According to the Examiner, Taylor discloses “a first massage head 13 at the first end of the handle (fig. 1)” and “a second massage head 13’ disposed at the second end of the handle.” (See Office Action, paragraph 10.) However, as Taylor states, “it can be shown that the individual vibration assemblies 13, 13’ of the present invention are preferably identical mirror-images of one another.” (See Taylor, col. 4, lines 6-9, emphasis added.) Indeed, FIG. 1 shows assemblies 13 and 13’ with massaging heads with the same shape. Because Taylor fails to disclose, and even teaches away from, two differently shaped massaging heads, it fails to teach each and every element of the claims. Accordingly, withdrawal of the rejection is in order and is respectfully requested. In addition, Applicants respectfully submit that dependent claims 2-6 and 20 are allowable since they depend on what is now believed to be allowable base claim 1.

### **Double Patenting**

Claim 17 is rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over the claim of U.S. Pat. No. D510,441 to Harris, Jr. et al. According to the Examiner, the cited reference teaches all the limitations recited in claim 17,

“except it is silent regarding the second end being used as a massaging head.” (See Office Action, paragraph 12.) The Examiner asserts that “it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use the U.S. Patent No. D510,441’s second end as a massaging head.” Applicants respectfully traverse this rejection, because the Examiner fails to properly establish any teachings in U.S. Pat. No. D510,441, or any other reference, to modify the massager of U.S. Pat. No. D510,441 to use a second end as a massaging head. In this regard, Applicants respectfully contend that the Examiner has failed to establish a *prima facie* case of obviousness. Therefore, this rejection is believed to be improper, and withdrawal of this rejection is in order and is respectfully requested.

**Rejections under 35 U.S.C. § 103**

Claim 8 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Cheng. In view of the amendment to base claim 1, Applicants respectfully submit that this rejection is rendered moot and that dependent claim 8 is allowable at least for the reason of its dependency on allowable base claim 1.

Independent claim 17 is rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No D336,964 to Tarjoto in view of U.S. App. Pub. No. 2005/0203445 to Tsai. Applicant respectfully traverses this rejection. The Examiner asserts that Tarjoto discloses “a second massage head disposed at the second end of the handle.” (See Office Action, paragraph 14.) However, there is nothing in the design patent of Tarjoto to suggest that there is a second active massage head. Just as the Examiner concedes that the design patent to Harris, Jr. et al. “is silent regarding the second end being used as a massaging head,” the design patent to Tarjoto is also silent on the use of the second head as a massaging head. (See Office Action, paragraph 12.)

Because Tarjoto does not disclose two active massage heads, there is no motivation to combine Tarjoto with features of the dual-headed massager taught by Tsai. In particular, there would be no motivation to combine Tarjoto with the grip rims 101 used at two massager heads in Tsai, as suggested by the Examiner. In addition, Tsai teaches that the massaging heads should have the same shape, because, as illustrated in FIGS. 1-9, the same “massaging head 10” is used on both ends. (See also Tsai, paragraph [0020].) Moreover, “FIG. 9 shows application of the massager to the sole” where heads with the same shape would be desired to get the same treatment on both soles. (See Tsai, paragraph [0032].) Thus, Tsai clearly


teaches that the massager should have the same shapes on both ends, and fails to disclose, or even suggest, that it should be have asymmetric ends as taught by Tarjoto. Therefore, the Examiner fails to properly establish any teachings in either of the cited references to combine them and modify the massager in Tajoto in the manner suggested in the Office Action. In this regard, Applicants respectfully contend that the Examiner has failed to establish a *prima facie* case of obviousness. Therefore, this rejection is believed to be improper, and withdrawal of this rejection is in order and is respectfully requested.

Even *assuming* that there is a motivation to combine the two references, the combination would still fail to disclose each and every element recited in claim 17. In particular, amended claim 17 recites a first massage head with “a first upper portion having a first massage head depression with a longitudinal axis substantially parallel to the elongate dimension of the handle.” In addition, claim 17 recites a second massage head with “a second upper portion having a second massage head depression with a longitudinal axis substantially parallel to the elongate dimension of the handle, and a third massage head depression with a longitudinal axis substantially parallel to the longitudinal axis of the second massage head depression.” According to the Examiner, Tarjoto fails to disclose the depressions recited in claim 17. Thus, the Examiner combines Tarjoto with Tsai in which “each head has a depression (grip section 101, fig. 1) suitable for the gripping of fingers and hand (paragraph 23).” (See Office Action, paragraph 14.) However, Tsai indicates that element 101 is not a depression, but a “grip rim.” (See Tsai, paragraph 23.) Indeed, FIGS. 1-3 show that element 101 is a part of the massager body forming a rim on one side of a hole that extends through the body. In addition, contrary to claim 17, FIG. 1 shows that neither grip rim 101 nor the hole appears “substantially parallel to the elongate dimension of the handle.” Indeed, nothing in Tsai, particularly in FIGS. 1-2, suggests that the crescent shaped hole and rim end could be oriented to be substantially parallel to the elongate dimension of the handle. Moreover, Tsai only shows two grip rims and fails to teach the use of a first depression at one massage head and a second and a third depression at the other massage head, as recited by claim 17. Correspondingly, Tsai makes no suggestion that a third depression should even have “a longitudinal axis substantially parallel to the longitudinal axis of the second massage head depression,” as also recited in claim 17. Accordingly, because Tarjoto and Tsai fail to disclose the depressions recited by claim 17, even a combination of

the references fails to disclose each and every element of the claim. Thus, on these grounds, withdrawal of this rejection is in order and respectfully requested.

Therefore, in view of the amendments and the remarks provided herein, the present application is now believed to be in condition for allowance. However, should the Examiner find some issue to remain unresolved, or should any new issues arise, which could be eliminated through discussions with Applicants' representative, then the Examiner is invited to contact the undersigned by telephone in order that further prosecution of this application can thereby be expedited.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Tim L. Brackett, Jr.', written over a horizontal line.

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